

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

ILLINOIS  
COMMERCE COMMISSION

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People of Cook County )  
 )  
 Complainant, )  
 )  
 v. ) No. 01-0175  
 )  
 Northern Illinois Gas Company )  
 )  
 Respondent. )

CHIEF CLERK'S OFFICE

**d/b/a NICOR GAS COMPANY**

support thereof, Nicor Gas answers and states as follows:

## ANSWER OF NICOR GAS

approved the filing on February 15, 2001.

2. Nicor Gas admits the allegations of ¶ II.2.
3. Nicor Gas lacks information sufficient to admit or deny the allegations of ¶ II.3.
4. Nicor Gas lacks information sufficient to admit or deny the allegations of ¶ III.4.
5. Nicor Gas admits the allegations of ¶ III.5.
6. With respect to the allegations of ¶ III.6, Nicor Gas states that Section 10-108 of the Public Utilities Act (“Act”) and any other “laws and regulations” to which the Complainant refers speak for themselves.
7. With respect to the allegations of ¶ IV.7, Nicor Gas states that Section 8-101 of the Act speaks for itself.
8. With respect to the allegations of ¶ IV.8, Nicor Gas states that Section 8-201 of the Act speaks for itself.
9. With respect to the allegations of ¶ IV.9, Nicor Gas states that Section 8-401 of the Act speaks for itself.
10. With respect to the allegations of ¶ IV.10, Nicor Gas states that Section 8-501 of the Act speaks for itself.
11. With respect to the allegations of ¶ IV.11, Nicor Gas states that Section 9-241 of the Act speaks for itself.
12. With respect to the allegations of ¶ IV.12, Nicor Gas states that Section 9-250 of the Act speaks for itself.
13. With respect to the allegations of ¶ IV.13, Nicor Gas states that Section 9-252 of the Act speaks for itself.

14. With respect to the allegations of ¶ IV.14, Nicor Gas states that 83 Ill. Adm. Code 280.120 speaks for itself.

15. Nicor Gas admits the allegations of ¶ IV.15.

16. Nicor Gas lacks information sufficient to admit or deny the allegations of ¶ IV.16.

17. Nicor Gas admits that the Commission approved its Budget Payment Plan on February 15, 2001, but lacks information sufficient to admit or deny whether or to what extent the Commission considered the request filed by Complainant.

18. Nicor Gas lacks information sufficient to admit or deny the allegations of ¶ IV.18.

19. Nicor Gas lacks information sufficient to admit or deny the allegations of ¶ IV.19.

20. With respect to the allegations of ¶ IV.20, Nicor Gas states that the record of the hearing of April 20, 2001 in this matter speaks for itself.

21. Nicor Gas denies the allegations of ¶ IV.21.

22. Nicor Gas admits the allegations of Count I ¶ 22.

23. With respect to the allegations of Count I ¶ 23, Nicor Gas states that the laws, statutes, and regulations of the State of Illinois speak for themselves.

24. With respect to the allegations of Count I ¶ 24, Nicor Gas states that 83 Ill. Adm. Code 280.120 governs the provision of Budget Payment Plans, and that the rule speaks for itself.

25. With respect to the allegations of Count I ¶ 25, Nicor Gas admits that its Budget Payment Plan is available to any customer served under Rates 1 or 4, except customers whose service is disconnected for non-payment, customers who are on previously negotiated payment arrangements, and customers whose average monthly bill is greater than \$4,000. Ill. C.C. No. 16- Gas, 3<sup>rd</sup> Revised Sheet No. 39 (see Ex. A to the Complaint). The Company denies the

allegation that this provision “excludes low-income customers from participation” in its Budget Payment Plan.

26. With respect to the allegations of Count I ¶ 26, Nicor Gas admits that it will solicit customers to participate in its budget payment plan. The Company denies the allegation that it does not have an education or solicitation plan, and further answers that the Company’s education and solicitation plan for its Budget Payment Plan includes use of bill inserts, the Company’s *Sharing Program* which operates through the Salvation Army, customer service representatives, newspaper advertisements, billboards, radio advertisements and bills themselves, which enable customers to sign up by checking a box and remitting the monthly payment amount.

27. Nicor Gas admits the allegations of the first sentence of Count I ¶ 27. The Company denies the allegations of the second sentence of Count I ¶ 27, and states that once LIHEAP eligibility is confirmed, Nicor Gas calculates the monthly budget payment amount at the next quarterly adjustment after reflecting the LIHEAP payment. The Company further answers that, under the terms of the Company’s Budget Payment Plan (Ex. A to the Complaint), each customer’s account is reviewed at least quarterly, to determine whether any change in the levelized monthly payment amount is warranted. Consequently, if the LIHEAP recipient is a Budget Payment Plan customer, LIHEAP payments received on his behalf are necessarily and automatically utilized to pay any past due amount and then to levelize and reduce the customer’s monthly Budget Payment Plan payments.

28. Nicor Gas denies the allegations of the first sentence of Count I ¶ 28, and states that the budget payment amount is based on the customer’s use factors, forecasted gas costs,

distribution charges, and applicable taxes. The Company denies the allegations of the second sentence of Count I ¶ 28, and states that it utilizes actual meter reads, as well as other updated data, to adjust the amount of a customer's Budget Payment Plan payments.

29. Nicor Gas denies the allegations of Count I ¶ 29, and states that its Budget Payment Plan provides for quarterly reviews of the budget payment amount, and specifies that the Company may revise the payment amount if it varies by \$6.00 or more from the budget payment amount in effect at the time of the review. The Company's Budget Payment Plan further provides that Nicor Gas may revise the estimate of the aggregate amount of any customer's bills for the budget period and advise the customer of the revised amount whenever, in the Company's judgment, it is deemed advisable.

30. With respect to the allegations of Count I ¶ 30, Nicor Gas admits that a customer will be removed from the Budget Payment Plan if his account is past due by an amount equal to or greater than two monthly installments. The Budget Payment Plan further provides that an installment is considered past due if it is not received by the due date, unless the customer's account has a credit balance. The Company further answers that a customer will not be removed from the Budget Payment Plan for partial or late payments, unless his account is past due by an amount equal to or greater than two monthly installments.

31. Nicor Gas admits the allegations of Count I ¶ 31, and further answers that a Budget Payment Plan customer with a year-end credit balance may apply the balance to the next year's payment amount or receive a check for the credit balance. Further answering, the Company states that, because Nicor Gas reviews each customer's budget plan amount quarterly and adjusts it if the amount varies by \$6.00 or more (see paragraph 29 above), year-end variations between

payments and actual charges should be minimized, provided the customer has made his Budget Payment Plan payments in full and when due.

32. Nicor Gas denies the allegations of Count I ¶ 32. Answering further, the Company states that its Budget Payment Plan does not address deferred payment arrangements, except insofar as the Budget Payment Plan currently does not place any limit on the amount of arrears that may be included in the initial year's calculation of the Budget Payment Plan monthly installments. Budget Payment Plan customers therefore need not enter into a deferred payment agreement during their first year in the program. By paying their arrears through the Budget Payment Plan rather than a deferred payment agreement, customers can spread their payments over the twelve months of the Budget Payment Plan, rather than the shorter term of the deferred payment agreement, and can avoid the 1-1/2 percent per month late payment charge imposed under a deferred payment agreement. See 83 Ill. Adm. Code 280.110, 280.90. Further answering, Nicor Gas states that, in a subsequent year, the limit on the amount of arrears that may be included in calculation of the Budget Payment Plan amount is \$77.

33. With respect to the allegations of Count I ¶ 33, Nicor Gas admits that, if a Budget Payment Plan customer incurs a debit balance during the budget plan period, a finance charge equal to the annual credit rate, as defined in the Company's tariffs, plus 3% will be charged, based on the customer's monthly account balance shortfall. Nicor Gas further states that this Commission-approved finance charge is designed to recover the Company's costs, and denies that the charge is arbitrary.

34. With respect to the allegations of the first sentence of Count I ¶ 34, Nicor Gas admits that, when a customer's Budget Payment Plan account has a credit balance, the Company pays a

credit, based on the average daily credit balance, at the annual credit rate defined in the Company's tariffs. Further answering, the Company states that a customer may obtain a refund of all or any part of a credit balance upon request at any time. Nicor Gas admits the allegations of the second sentence of Count I ¶ 34, and denies the allegations of the third sentence of Count I ¶ 34.

35. Nicor Gas admits the allegations of Count I ¶ 35. Answering further, Nicor Gas states that spreading Budget Payment Plan payments over 12 months is consistent with 83 Ill. Adm. Code 280.120.

36. Nicor Gas denies the allegations of Count I ¶ 36.

37. Nicor Gas denies the allegations of Count II ¶¶ 1 - 36.

38. Nicor Gas denies the allegations of Count III ¶¶ 1 - 36.

39. Nicor Gas denies the allegations of Count IV ¶¶ 1 - 36.

40. Nicor Gas denies the allegations of Count V ¶¶ 1 - 36.

41. Nicor Gas denies the allegations of Count VI ¶¶ 1 - 36.

42. Nicor Gas denies the allegations of Count VII ¶¶ 1 - 26.

#### **AFFIRMATIVE DEFENSES AND MOTIONS TO DISMISS**

43. **Counts I and V.** Nicor Gas moves to dismiss Counts I and V, except with respect to the issue of whether the charges imposed and paid by the Company on Budget Payment Plan credit and debit balances are just and reasonable on a prospective basis, on the ground that Cook County's allegations in Counts I and V, even if true, do not constitute a violation of 220 ILCS 5/8-101, 220 ILCS 5/9-241, or 83 Ill. Adm. Code 280.120 and thus do not state a claim upon which relief can be granted. In support of this motion, Nicor Gas states as follows:

- a. In its Petition for Emergency Rulemaking and Comments in Docket No. 00-0789, of which the Commission may take administrative notice pursuant to 83 Ill. Adm. Code 200.640 (a) (2), Cook County has requested that the Commission issue emergency rules which would impose the same requirements that Cook County seeks in paragraphs D through M of Counts I and V. While Nicor Gas and other utilities have argued that most of the relief sought by Cook County is beyond the scope of Docket No. 00-0789 because Cook County failed to present proposed rule language, Cook County's arguments in Docket No. 00-0789 constitute an admission that the relief it seeks in paragraphs D through M of Counts I and V is not currently mandated by 83 Ill. Adm. Code Part 280. Accordingly, even if the allegations of Counts I and V of the Complaint were true, they could not constitute a violation of Section 280.120.
- b. Exclusion from the Company's Budget Payment Plan of customers whose service has been disconnected for nonpayment does not constitute exclusion of or undue discrimination against low-income customers, and is not unjust or unreasonable within the meaning of Section 8-101 or 9-241, as alleged by Cook County (§ 25), because these customers are entitled to be reconnected and to receive service from the Company pursuant to Section 8-207 of the Act, Section 280.138 of the Commission's rules, and the Company's tariff, Ill. C.C. No. 16 - Gas, 1<sup>st</sup> Revised Sheet No. 38.
- c. Even if Cook County's allegation that Nicor Gas has not "submitted" an education and solicitation plan (§ 26) were true, the Company's alleged failure to "submit" such a plan is not unjust or unreasonable or discriminatory and thus does not violate Section 8-101 or 9-241 of the Act.



d. Even if Cook County's allegation that Nicor Gas' Budget Payment Plan does not expressly "provide for calculation of LIHEAP payments" (§ 27) were true, it would not state a claim for conduct that could violate Section 8-101 or Section 9-241 of the Act, because the Company's Budget Payment Plan, on its face (Ill. C.C. No. 16 - Gas, Original Sheet No. 39.5, attached as Ex. A to the Complaint), provides for at least quarterly review and recalculation of the levelized payment amount to account for *any* material changes, which would include LIHEAP payments.

e. Even if Cook County's allegation (§ 28) that Nicor Gas' Budget Payment Plan does not expressly provide for adjustments of the monthly payment amount based on actual meter reads were true, it would not state a claim for conduct that could violate Section 8-101 or Section 9-241 of the Act for at least two reasons. First, the Company's Budget Payment Plan, on its face (Ill. C.C. No. 16 - Gas, Original Sheet No. 39.5, attached as Ex. A to the Complaint), provides for at least quarterly review and recalculation of the levelized payment amount to account for *any* material changes, which would include actual meter reads. Second, in any event, the Commission's rules expressly permit use of estimated bills. 83 Ill. Adm. Code 280.80.

f. Even if Cook County's allegation (§ 29) that Nicor Gas' Budget Payment Plan does not "provide clear limits on when and how many times adjustments can be made" to a customer's budget payment amount were true, it would not state a claim for conduct that could violate Section 8-101 or Section 9-241 of the Act. Among other benefits, periodic review and adjustment of the budget payment amount is reasonable, just and nondiscriminatory because it ensures that credits such as LIHEAP payments are reflected

in the levelized payment amount, that actual as opposed to estimated usage is reflected in the levelized payment amount, and that payments are equalized to the greatest degree possible over the annual period.

g. Even if Cook County's allegation (§ 30) that the Company's Budget Payment Plan "does not address partial or late payments" were true, it would not state a claim for conduct that could violate Section 8-101 or Section 9-241 of the Act because the Commission's own rules (83 Ill. Adm. Code 280.120) expressly permit a utility to terminate a customer from a budget payment plan if he fails to satisfy the payment requirements under the plan.

h. Paragraph 31 of the Complaint does not state a claim for conduct that could violate Section 8-101 or Section 9-241 of the Act because, *inter alia*, these provisions relating to year-end debit balances and credit balances treat them symmetrically, are just and reasonable, and apply equally to all Budget Payment Plan customers. Moreover, the Budget Payment Plan on its face (Ill. C. C. No. 16 - Gas, Original Sheet 39.5, attached as Ex. A to the Complaint) provides for review and adjustment of each customer's budget plan amount at least quarterly, if the amount varies by \$6.00 or more (see paragraph 29 above), ensuring that year-end variations between payments and actual charges are minimized.

i. The Company suspects that Cook County's allegation in § 32 contains a typographical error. Cf. § K, requesting that the Commission place a limit on the extent to which an arrears payment can increase a Customer's budget payment. Whatever the intent of Cook County's § 32, it does not state a claim for conduct that could violate

Section 8-101 or Section 9-241 of the Act, because any limitation on the size of an arrears payment under a deferred payment agreement would necessarily lengthen the term of the deferred payment agreement, contrary to 220 ILCS 5/8-206 and 220 ILCS 5/8-207, or violate the payment requirements of 220 ILCS 5/8-207.

j. Nicor Gas strongly believes that its Commission-approved charges and payments associated with Budget Payment Plan debit and credit balances (§§ 33 and 34 of Cook County's Complaint) are just and reasonable and nondiscriminatory, and therefore do not violate Section 8-101 or Section 9-241 of the Act. Prior to this heating season, the Company's levelized payment plan effectively limited the enrollment period, ensuring that customers would not have negative account balances. Because the Budget Payment Plan is new, there is nothing in the Company's base rates to cover the carrying costs that result from budget plans. For this reason, the Company believes that its Budget Payment Plan properly permits it to apply a finance charge whenever cumulative payments under the plan fall below actual usage. Use of such a charge -- which, in this case, has been approved by the Commission -- ensures that the cost of budget billing is borne by customers who choose to use the plan, and that customers who pay their bills in full and on-time will not be required to bear the financial costs incurred to serve customers under budget plans who have negative account balances.

While Nicor Gas asserts and believes that its Commission-approved finance charge and interest payment provisions are just and reasonable and not discriminatory, the Company believes that, to the extent that the Commission determines that evidentiary hearings to examine the issue are appropriate, the matter should be addressed in this

Complaint case and should be limited to Cook County's allegation in Counts I and V that the finance charge on debit balances and interest payment on credit balances violate Section 8-101 and/or Section 9-241, on a prospective basis.

k. Paragraph 35 of the Complaint does not state a claim alleging conduct that could violate Section 8-101 or Section 9-241 of the Act because, *inter alia*, the Commission's own rules clearly contemplate that budget plan payments will be spread over 12 months. 83 Ill. Adm. Code 280.120.

44. **Count II.** Nicor Gas moves to dismiss Count II, on the ground that it fails to state a claim upon which relief can be granted. Section 8-201 of the Act, upon which Cook County relies in Count II, is purely a statement of legislative goals and policies, and not a substantive provision of the Act. See Governor's Office of Consumer Services v. Commerce Comm'n, 220 Ill. App. 3d 68, 580 N. E.2d 920 (3<sup>rd</sup> Dist. 1991); Citizens Util. Bd. v. Commerce Comm'n, 166 Ill. 2d 111, 651 N.E.2d 1089 (1995). Nor does Section 8-201 impose affirmative obligations on public utilities. Accordingly, the Commission cannot properly find that Nicor Gas has violated Section 8-201 of the Act, or that Cook County is entitled to relief under Section 8-201.

45. **Count III.** Nicor Gas moves to dismiss Count III, on the ground that it fails to state a claim upon which relief can be granted. The "least cost" obligation of Section 8-401 of the Act, upon which Cook County relies in Count III, imposes upon utilities an obligation to provide service and operate their facilities in a manner that maximizes revenues and minimizes expenses for the system as a whole, in the interest of all of its ratepayers. See Northern Illinois Gas Co., Docket No. 93-0320 (1996). Consistent with this obligation, the finance charge incorporated into the Company's Budget Payment Plan recovers from those customers with negative account

balances the incremental costs incurred in offering them a budget payment plan. Contrary to the implication of Cook County's Count III, "least-cost" service under Section 8-401 does not mean that Nicor Gas has an obligation to offer "cut-rate" services to any class of customers, including customers with negative account balances, or to offer service at rates that do not recover the Company's costs. Accordingly, Nicor Gas' Budget Payment Plan does not and cannot violate Section 8-401 of the Act.

46. **Count IV.** Nicor Gas moves to dismiss Count IV, on the ground that it fails to state a claim upon which relief can be granted. Section 8-501 of the Act, upon which Cook County relies in Count IV, addresses the power of the Commission, and does not impose any affirmative obligations on public utilities. Accordingly, the Commission cannot properly find that Nicor Gas has violated Section 8-501 of the Act.

47. **Count VI.** Nicor Gas moves to dismiss Count VI, on the ground that it fails to state a claim upon which relief can be granted. Section 9-250 of the Act, upon which Cook County relies in Count VI, addresses the power of the Commission, and does not impose any affirmative obligations on public utilities. Accordingly, the Commission cannot properly find that Nicor Gas has violated Section 9-250 of the Act.

48. **Count VII.** Nicor Gas moves to dismiss Count VII, on the ground that Cook County's demand for reparations under Section 9-252 of the Act constitutes unlawful retroactive ratemaking. In support of this motion, Nicor Gas states as follows:

- a. As noted above, in Docket No. 01-0116, the Commission approved Nicor Gas' Budget Payment Plan tariff, without a hearing, as it is authorized to do under the Act.

E.g., Antioch Milling Co. v. Pub. Serv. Co., 4 Ill. 2d 194 (1954). The tariff approved by

the Commission expressly authorizes the Company to impose a finance charge on debit balances and to pay interest on credit balances, as described in paragraphs 33 and 34, above.

b. Nicor Gas is legally required to charge the rates, including the finance charge, approved by the Commission. 220 ILCS 5/9-240; Hartigan v. Commerce Comm'n, 148 Ill. 2d 348, 592 N.E.2d 1066 (1992).

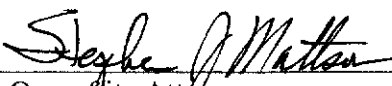
c. Once the Commission approves a utility's charges as just and reasonable, it cannot later require the utility to pay reparations for charging those rates under Section 9-252. Allowing reparations where a utility has imposed Commission-approved charges would flatly and unlawfully violate the well-established rule against retroactive ratemaking. Mandel Brothers, Inc. v. Chicago Tunnel Terminal Co., 2 Ill. 2d 205 (1954); Hartigan, 148 Ill. 2d 348, 592 N.E.2d 1066.

WHEREFORE Nicor Gas requests that the Commission enter an order (1) dismissing in their entirety Counts II, III, IV, VI and VII of Cook County's Complaint, and (2) dismissing Counts I and V of Cook County's Complaint, except to the extent that the Commission determines that evidentiary hearings should be held with respect to allegations that seek to challenge *prospectively*, under Sections 8-101 and/or 9-241 of the Act, the Company's

imposition of a finance charge on negative account balances (debit balances) and its payment of interest on positive account balances (credit balances) under its Budget Payment Plan.

Respectfully submitted,

NORTHERN ILLINOIS GAS COMPANY  
d/b/a NICOR GAS COMPANY

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May 18, 2001

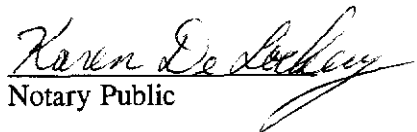
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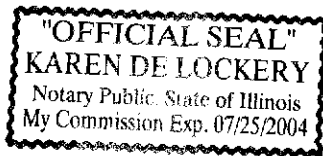
STATE OF ILLINOIS       )  
                                      )SS  
COUNTY OF DUPAGE     )

I, Rocco D'Alessandro, being first duly sworn, state that I am Vice President Distribution Services of Northern Illinois Gas Company d/b/a Nicor Gas Company; that I have read the foregoing Answer and Motion to Dismiss in Docket No. 01-0175; and that the facts contained therein are true to the best of my knowledge and belief.



Subscribed and sworn to  
before me this 17 day of  
May, 2001.

  
Notary Public





## CERTIFICATE OF SERVICE

I, Stephen J. Mattson, hereby certify that a copy of the foregoing Answer And Motion To Dismiss Of Northern Illinois Gas Company d/b/a Nicor Gas Company was served upon the parties listed on the attached Service List, by e-mail and first class mail, postage prepaid on May 18, 2001.

A handwritten signature in black ink, reading "Stephen J. Mattson", written over a horizontal line.

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